HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1277 of 2003 (SS)

Sri Umeshwar Singh vs. State and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 22.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1277 of 2003 (SS)

Sri Umeshwar Singh Rawat
S/o Sri Tej Singh Rawat
R/o village Kundoli P.P. Aikeshwar
District Pauri Garhwal ..... Petitioner

Versus

1. Secretary Education.
2. Direction of Basic Education, Uttaranchal
3. District Basic Education Officer,
   Pauri Garhwal ..... Respondents

Sri J.P. Joshi, Advocate for the petitioner
Standing Counsel for respondent no.1 and
Sri H.M. Raturi for respondent nos.2 and 3.

Dated: October 22, 2003

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for the issue of a writ order or direction in the nature of Certiorari quashing the impugned order of transfer dated 30.6.2003 Annexure-2 to the writ petition passed by respondent no. 3.

Brief facts giving rise to the present Writ Petition are that the petitioner is working as Coordinator at Block Resource Centre, Gajara situated at Aikeshwar Block, Pauri Garhwal. The post of the petitioner is equivalent to the post of Head Master. The petitioner was transferred to village are at Patishan as Head Master, Patishan. The

petitioner is a chronic patent of disk slip in spinal cord for the last more than three years and still undergoing treatment. He has stated that he has filed to copy of the report of Radiologist along with his representation.

He has alleged that one Sri Kripal Singh Rana, Head Master of Junior High School, Simarkhal was willing to join at Gajara and petitioner was also willing to join at Simarkhal, because Junior High School, Simarkhal is situated at a distance of 5 km from the present place of posting of the petitioner. The said proposal of mutual transfer was also communicated to the Education Minister, who has directed the Basic Education officer, Pauri Garhwal to approve said mutual transfer but respondent no.3 has not decided the representation of the petitioner.

Further grievance of the petitioner is that the transfer order is malafide as well as on the ground that according to clause 3E of the Government Transfer policy dated 30th May 2003 the tenure of Head Master at one place should not exceed for more than 10 years. It reads as under:

माध्यमिक विद्यालय के प्रधानाध्यापक अधिकतम 5 वर्ष और बेसिक विद्यालयों के प्रधानाध्यापक 10 वर्ष से अधिक अवधि तक किसी एक विद्यालय में नही रह सकेंगे किन्तु दुर्गम एवं अति दुर्गम क्षेत्रों में उक्त समयावधि लागू नहीं की जायगी ।

It will appear from the aforesaid that it is simply a guideline

and it provides the maximum period of stay and not the minimum period of stay at one place. Further it does not prohibit any transfer.

The transfer order has been passed in public interest therefore no interference is required under Article 226 of the Constitution of India.

The Apex Court in the case of Shilpi Bose and others Vs. State of Bihar and others AIR 1991 SC 532, has held that the Government servant holding a transferable post has no vested right at one place or the other. It has been further held that the transfer orders issued by the Competent Authority do not violate any of his legal rights. The observations of the Apex Court are quoted below:-

> *"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the*

Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer order issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conductive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

The petitioner has alleged in paragraph 10 of the writ petition that his representation has not been decided by the authority concerned.

The Apex Court has observed that the party should approach the higher authorities in the department. The petitioner has already made a representation, which has been mentioned as annexure -5 of the writ petition. Authorities concerned are directed to consider the representation of the petitioner in accordance with the observations made above and will dispose of it within three months after receipt of certified copy of this order.

The transfer order shall remain in abeyance for three months only.

With aforesaid observations the writ petition is dismissed. No order as to costs.

22.10.2003 **(Rajesh Tandon, J.)**
*Dhyani